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TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

Total Number of Pages in This Submission

Application Number 09/406,353

Filing Date September 28, 1999

First Named Inventor Giammaressi, Tom

Group Art Unit 2613

Examiner Name B.M. Senfi

Attorney Docket Number DIVA/044

ENCLOSURES (check all that apply)

☒ Fee Transmittal Form

☐ Fee Attached

☐ Amendment / Response

☐ After Final

☐ Affidavits/declaration(s)

☐ Extension of Time Request

☐ Express Abandonment Request

☐ Information Disclosure Statement

☐ Certified Copy of Priority Document(s)

☐ Response to Missing Parts/ Incomplete Application

☐ Response to Missing Parts under 37 CFR 1.52 or 1.53

☐ Assignment Papers (for an Application)

☐ Drawing(s)

☐ Licensing-related Papers

☐ Petition Routing Slip (PTO/SB/69) and Accompanying Petition

☐ Petition to Convert to a Provisional Application

☐ Power of Attorney, Revocation Change of Correspondence Address

☐ Terminal Disclaimer

☐ Request for Refund

☐ CD, Number of CD(s) _____

☐ After Allowance Communication to Group

☐ Appeal Communication to Board of Appeals and Interferences

☒ Appeal Communication to Group (Appeal Notice, Brief, Reply Brief)

☐ Proprietary Information

☐ Status Letter

☒ Other Enclosure(s) (please identify below):

Original and two copies of Reply Brief

Post card receipt

Remarks

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MAY 18 2004

Technology Center 2600

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual name

EAMON J. WALL, Reg. No. 39,414

Signature

Date

May 5, 2004

CERTIFICATE OF TRANSMISSION UNDER 37 C.F.R. §1.8

I hereby certify that this correspondence is being transmitted by U.S. First Class Mail, Mail Stop-Appeal Brief, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on May 11, 2004, Facsimile No. (703) 872-9306

Alberta Gamble
Name of person signing this certificate

Alberta Gamble May 11, 2004
Signature and date



FEE TRANSMITTAL for FY 2004

Patent fees are subject to annual revision.

Complete if Known

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TOTAL AMOUNT OF PAYMENT (\$ 165.00

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METHOD OF PAYMENT (check all that apply)				FEE CALCULATION (continued)																																																																																																																																																																																																														
<input type="checkbox"/> Check <input type="checkbox"/> Credit card <input type="checkbox"/> Money <input type="checkbox"/> Other <input type="checkbox"/> None <input checked="" type="checkbox"/> Deposit Account: Deposit Account Number: 20-0782 Deposit Account Name: Moser, Patterson & Sheridan The Commissioner is authorized to: (check all that apply) <input checked="" type="checkbox"/> Charge fee(s) indicated below <input checked="" type="checkbox"/> Credit any overpayments <input type="checkbox"/> Charge any additional fee(s) during the pendency of this application <input type="checkbox"/> Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.				3. 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IN THE UNITED STATES
PATENT AND TRADEMARK OFFICE

PATENT APPLICATION

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MAY 18 2004

Technology Center 2600

In re Application of: **Giammaressi**

Docket No.: **533/044**

Serial No.: **09/406,353**

Filed: **September 28, 1999**

Group Art Unit: **2613**

Examiner: **Senfi, Behrooz, M.**

Title: **SERVICE RATE CHANGE METHOD AND APPARATUS**

REPLY BRIEF

Mail Stop Appeal Brief – Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Reply Brief is filed under the provisions of 37 CFR 1.193(b) and M.P.E.P. §1208.02.

REPLY TO EXAMINER'S ANSWER

Applicants/Appellants, in accordance with 37 C.F.R. §1.193 and M.P.E.P. §1208.02 and in response to the Examiner's Answer dated February 24, 2004, hereby submit this Reply Brief to the Board of Patent Appeals and Interferences. Although Applicants/Appellants believe that no fee is due in conjunction with this response, the Commissioner is hereby authorized to charge any fees necessary to make this reply timely and acceptable, including extension of time fees under 37 C.F.R. §1.136, to Deposit Account No. 20-0782.

Applicants/Appellants submit the following remarks in response to the Examiner's Answer dated March 11, 2004, in further support of the arguments presented in the Applicants' principal brief filed on December 23, 2003. Further,

Applicants/Appellants believe Examiner's Answer repeatedly mischaracterizes the teachings of the cited references and the desirability of any combination of the same with references having non-compatible teachings. The following points of argument are presented in response to the Examiner's Answer.

(1) On page 2 of the Examiner's Answer, the Examiner notes "the summary of invention contained in the brief is inaccurate. Page 10 of the Appeal Brief, line 13 states that "claim 1 positively recites". However claim 1, has been canceled by the appellant's (paper no 11, dated May 12, 2003)." In response, the appellants thank the Examiner for pointing out the mistake. It is noted that the claimed features recited on page 10 in the Summary of the Appeal Brief is in fact claim 17, but was mistakenly labeled as claim 1. The Board and Examiner are hereby advised that the both instances that recite "claim 1" on page 10 of the summary (i.e., lines 13 and 14) should be replaced with and recite "claim 17."

On page 13, line 17 of the Brief Description of the References, the sentence beginning "The Ravi patent overcomes these problems" should be replaced with "The Brown patent overcomes these problems". Additionally, on page 13, line 25 of the Brief Description of the References, the sentence beginning "The main focus of Brown is to resolve" should be replaced with "The main focus of Hang is to resolve". The Appellant apologizes for any confusion regarding these matters.

(2) On pages 8-11 of the Examiner's Answer, the Examiner repeatedly states that Ravi teaches the "transmission rate is selected from among a predetermined (pre-stored) discrete bandwidth programs (abstract, col. 3, lines 26-27), which reads on stored content encoded to provide the requested VOD content to the client subscriber in the event of appropriate BW and minimum BW by dynamically adjust/matched (optimize/utilize) the transmission rate." This statement is an incorrect interpretation of the prior art reference.

The Ravi reference specifically teaches that the "transmission rate is

selected from among a predetermined set of discrete bandwidth values or from within a continuous range of bandwidth values. The Examiner has taken the term "values" out of context to include "programs". Specifically, the Ravi reference discloses adjusting transmission rates of information. Transmission rates can be selected from among a predetermined set of bandwidth values, where "bandwidth values" refers to capacity, as is conventionally known in the art.

Ravi illustratively discusses various capacity problems associated with bandwidth. For example "the average bandwidth capacity of the network connection is insufficient to support the transmission rate selected by the server/client. This is a first order bandwidth capacity problem. The second problem is the rate of change of bandwidth capacity over time of the network connection ... This is a second order network bandwidth problem, i.e., changes in the bandwidth capacity over time (see Ravi, col. 2, lines 30-47). Accordingly, the term bandwidth values as taught by Ravi, and is conventionally known the art, refers to bandwidth capacity, as opposed to "programs," as stated by the Examiner.

The Appellants' invention deals with providing selected content (i.e., programs) that is encoded and stored in a manner suitable to be delivered to a subscriber according the bandwidth availability (i.e., capacity) between the provider equipment and subscriber equipment. That is, the source information (i.e., the encoded content) that is sent differs, depending on the available bandwidth capacity between the provider equipment and subscriber equipment. In other words, the requested content of the Appellant's invention is variable.

By contrast, the Ravi reference teaches that the requested content remains constant, while the transmission rate of such requested content varies depending on the bandwidth capacity. The Applicant's invention solves bandwidth capacity restraints by providing requested content in various forms, i.e., "stored content encoded in a manner adapted to utilize the appropriate bandwidth." Conversely, the Ravi reference solve bandwidth capacity restraints

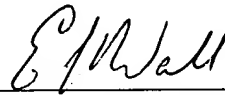
by dynamically adjusting the transmission rate of the data stream in response to changes in the bandwidth (see Ravi, col. 6, lines 36-41). Thus, the Examiner's contention the Ravi teaches "dynamically optimize/utilize the transmission rate using predetermined (pre-stored) discrete bandwidth programs" is without merit. For the reasons discussed in the Appeal Brief and this Reply Brief, it is submitted that the Appellant's invention is completely different from the Ravi reference, as well as the combination of the Ravi reference with the other cited references (i.e., Brown and Hang). That is, the combined references fail to teach or suggest "providing, in the event of appropriate bandwidth availability, said requested VOD content to said subscriber using stored content encoded in a manner adapted to utilize said appropriate bandwidth; and providing, in the event of minimum bandwidth availability, said requested VOD content to said subscriber using stored content encoded in a manner adapted to utilize minimum bandwidth." Therefore, the appellants submit that the appealed claims fully satisfy the requirements under 35 U.S.C. § 103 and are patentable thereunder.

CONCLUSIONS

For the reasons advanced above, Appellants state that the rejection of claims 17-22, 24-26, and 38-44 as being obvious under 35 U.S.C. § 103 is improper. Reversal of the rejection in this appeal is respectfully requested.

If necessary, please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 20-0782, and please credit any excess fees to the above referenced deposit account.

Respectfully submitted,



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